

1  
2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON  
4 AT TACOMA

5 JOSE A. MARTINEZ,

6 Petitioner,

7 v.

8 TIMOTHY WENGLER,

9 Respondent.

No. C09-5270 FDB/KLS

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

10  
11 Petitioner Martinez has filed a habeas corpus petition challenging his 2004 convictions  
12 for first degree child rape. The Magistrate Judge has concluded that the petition is successive  
13 and recommends that the case be transferred to the Ninth Circuit pursuant to Circuit Rule 22-  
14 3(a). Petitioner has filed objections that are not persuasive that this Court should do otherwise.

15 The Court having reviewed the Report and Recommendation of the Hon. Karen L.  
16 Strombom, United States Magistrate Judge, objections to the Report and Recommendation, if  
17 any, and the remaining record, does hereby find and Order:

- 18  
19 (1) The Court adopts the Report and Recommendation;  
20 (2) The petition (Dkt. 1) is TRANSFERRED TO THE NINTH CIRCUIT AS A  
21 SECOND OR SUCCESSIVE PETITION.  
22 (3) The clerk is directed to send copies of this Order to Petitioner and to the Hon.  
23 Karen L. Strombom AND TO ADMINISTRATIVELY CLOSE THIS FILE.

24 DATED this 20<sup>th</sup> day of July 2009.

25  
26 

FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE